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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,945	08/26/2002	Stefan Stark	52790-00005	6005

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EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,945

Applicant(s)

STARK ET AL.

Examiner

Marc A Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/8/02
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 – 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to Claim 1, the phrase ‘which is located at the corrugated tube between a radius of the corrugated tube or a tangent in terms of its inclination’ is indefinite, as it is difficult to determine the exact location of the cut, from what appears to be a poor foreign language translation. For purposes of examination, the cut will be assumed to be any oblique cut. The use of numbers in parentheses, for example ‘(1)’ to define the corrugated tube, is also not consistent with U.S. practice. Claim 1 recites the limitation "after the corrugated tube has cooled off" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 – 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hegler et al (U.S. Patent No. 4,513,787) in view of Hegler (U.S. Patent No. 3,776,679).

With regard to Claims 1 – 2, Hegler et al discloses a method for producing a plastic, dimensionally stable corrugated tube (plastic corrugated sheathing hose, therefore dimensionally stable; column 1, lines 10 – 15) for protectively enclosing electrical lines (for wrapping lengths of cable; column 1, lines 31 – 35) and which comprises a slitted opening the extends along a generated line (the tube is slit; column 3, lines 10 – 11), characterized in that the tube, after it has been made (column 3, lines 51 – 52) is cut open along a generating line at a uniformly ascending or descending angle (the hose is slit in a direction offset with respect to a radial direction of the hose, therefore an oblique cut made in a cutting device, the cutter; column 3, lines 29 – 32) and the cut open tube is passed through a deformation device subsequent to the cutting device (closure – operating device; column 3, lines 57 – 58) and compressed therein whereby the borders of the slitted opening slip over one another (the deflected sidewall, because of its elasticity, returns to undeflected position, therefore a self – compression; column 4, lines 6 – 10) then the border of the slitted opening on the outside is guided outward and is laid over the other border that was previously located on the outside (the arms which border the slitted opening and are resting on each other, therefore one on the inside and one on the outside, are pressed into a latched state; column 4, lines 10 – 15; Figures 4 and 5). Hegler et al fail to disclose a tube that is made by extruding the tube and providing it with corrugated peaks and troughs inside a corrugator.

Hegler teaches that it is well known in the art to make a corrugated tube (column 1, lines 9 – 11) by extruding the tube and providing it with corrugated peaks and troughs inside a corrugator (the tubing is manufactured, as a rule, by extruding and then pressed into molds that corrugate by internal pressure; column 1, lines 14 – 18) for the purpose of obtaining a tube

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having perfect shaping (column 4, lines 12 – 14). Therefore, one of ordinary skill in the art would have recognized the advantage of providing for steps of extruding of the tube and providing it with corrugated peaks and troughs inside a corrugator of Hegler in Hegler et al, which is a corrugated tube, depending on the desired quality of shaping of the end product as taught by Hegler.

With regard to Claims 3 – 6, the tube disclosed by Hegler et al is corrugated, as discussed above, and therefore comprises corrugated peaks and troughs, and therefore comprises a protrusion that is turned radially inward and extends parallel to the opening that is spaced apart from the slitted opening, on the side of that border previously positioned on the inside, the protrusion being in the form of a groove shaped orientation having the undulating profile of the tube and abutting against the border with its edge (the corrugation; column 1, lines 10 – 15; Figure 5).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (571) 272 – 1497. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold

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Pyon, can be reached at (571) 272 – 1498. FAX communications should be sent to (703) 872-

9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

Marc Patterson
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[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

6/23/04